

# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
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Instruction Memorandum No. AZ-2016-022  
Expires: 9/30/2019

To: District Managers and Field Managers

From: State Director

Subject: Mineral Disposal on Former Santa Fe Pacific Railroad Company Lands Acquired by the United States

**Purpose:** This instruction memorandum (IM) provides guidance on mineral disposal from lands acquired by the United States from successors of the Santa Fe Pacific Railroad Company (Santa Fe) where the mineral estate is non-Federal and may include the right to remove “gravel and ballast” for “railroad purposes” (former Santa Fe lands). This IM applies to the administration of new and existing mining operations on former Santa Fe lands and is a supplement to the Bureau of Land Management (BLM) Mineral Material Trespass Prevention and Abatement Handbook H-9235-1.

## **Policy/Action:**

**A. New Mining Operations:** The district and field offices will notify mineral estate owners who propose to develop minerals on former Santa Fe lands that they must apply for a surface use permit under 43 CFR Part 2920. The district or field office will review the surface use permit application to verify that it demonstrates that the applicant owns the minerals it seeks to remove (see section C, below, for guidance on determining mineral ownership on former Santa Fe lands). If the district or field office determines, in consultation with the Phoenix Field Solicitor's Office through the Arizona State Office Primary Technical Specialist (PTS), that the surface use permit applicant does own such minerals, the district or field office will continue to process the application under Part 2920. This permit process will include any required environmental analysis under the National Environmental Policy Act (NEPA), bonding, and cost recovery fees.

If the district or field office determines, in consultation with the PTS and Field Solicitor's Office, that the surface use permit applicant has not demonstrated ownership of the minerals, the district or field office will review the application to determine whether to dispose of the minerals under

the Materials Act of 1947 and 43 CFR Part 3600. If applicable, the district or field office will inform the surface use permit applicant that it must instead apply for a mineral materials sale under Part 3600.

**B. Existing Mining Operations:** The district and field offices should review existing mining operations on former Santa Fe lands, in consultation with the Field Solicitor's Office through the PTS, to determine ownership of the minerals being developed.

- a. Part 2920: If the operator owns the minerals, but is not operating under any Federal surface use authorization, the district or field office should establish a trespass case file and issue a trespass notice alleging violation of the appropriate law(s) and regulations. Upon receipt of the operator's response, the district or field office must decide whether to let the operator continue operations or demand that the operator cease operations pending decision on the 2920 permit. The operator must apply for a permit pursuant to 43 CFR Part 2920. The BLM must calculate trespass damages for the entire amount of time the operation has occurred at the site. A satisfactory trespass settlement must be negotiated and agreed upon by the operator and the BLM before permit issuance. Trespass funds received will be deposited into a BLM 5320 LAND account. In addition, a reclamation bond is required and must be calculated. Processing the 2920 permit must not proceed until cost recovery fees are estimated and collected.
- b. Part 3600: If the BLM owns the minerals, but the operator is mining without a Federal contract, the district or field office should establish a trespass case file and issue a trespass notice alleging violation of the appropriate law(s) and regulations. Upon receipt of the operator's response, the district or field office must decide whether to let the operator continue operations or demand that the operator cease operations pending decision on the 3600 sale. The operator must apply for a sale pursuant to 43 CFR Part 3600. The BLM must calculate trespass damages for the entire amount of material removed from the site. A satisfactory trespass settlement must be negotiated and agreed upon by the operator and the BLM before contract issuance. Trespass funds received will be deposited into a BLM 5320 MINL account. In addition, a reclamation bond is required and must be calculated. Processing the 3600 sale must not proceed until cost recovery fees are estimated and collected.
- c. Escrow: In the event that the BLM asserts mineral ownership of the mineral materials and the operator disagrees, the BLM can allow the operation to continue (Handbook 9235-1, Chap. II. A. 3.b.), but should issue a surface use permit with the condition that this permit is temporary until a determination is made about the mineral material ownership. This permit will require NEPA analysis, bonding, and cost recovery fees. Operations will be allowed to continue under an approved Plan of Operations until the BLM completes its mineral ownership determination. Pursuant to an escrow agreement, the operator must make regular payments for the value of the materials removed from the trespass site. Federal royalty payments must reflect fair

market value for the mineral material, which is determined by appraisal. The funds in the escrow account will not be disbursed to the operator or the U.S. Treasury until a final determination of ownership of the mineral materials is made. If a mineral material contract is required as a result of the mineral ownership determination, the royalty payment specified in the escrow agreement will be adjusted to reflect the actual appraised value of the mineral material at the time the contract is issued.

**C. Determining Mineral Ownership:** The district or field office will consult with the Field Solicitor's Office through the PTS to determine whether the applicant has demonstrated ownership of the minerals being or to be developed. The district or field office staff should provide the PTS with copies of the application, deeds submitted by the applicant to show ownership of the minerals, the deed by which the United States acquired the surface estate, and the BLM's initial conclusions about mineral ownership and applicable disposal authority.

**D. Operator Conflicts:** If the operator disputes the authorized officer's conclusions regarding the disposal authority, permitting requirements, or mineral ownership, district and field offices should contact the PTS immediately to determine next steps, including possible enforcement action. The PTS will involve the Field Solicitor's Office in formulating conflict resolution or enforcement action(s).

**Timeframe:** This policy is effective upon receipt.

**Budget Impact:** Implementation of this IM is to be performed within existing budget allocations. Existing policy requires that trespass cases be identified, prosecuted, abated, and resolved in accordance with established trespass procedures as identified in the BLM Mineral Material Trespass Prevention and Abatement Handbook H-9235-1.

**Background:** Santa Fe acquired fee simple title from the United States to certain public lands in Arizona and the adjoining states. In the 1950s, Santa Fe created split estates in thousands of acres of these lands by conveying the surface estate to private parties while reserving to itself in the deeds "all oil, gas, coal, and minerals whatsoever" (general mineral reservation). The deeds conveying the surface estate to these former Santa Fe lands generally also contained a condition that the conveyance was subject to Santa Fe's continuing right to appropriate "gravel and ballast" from the surface of the transferred lands "for railroad purposes" (railroad reservation).

The United States subsequently acquired many former Santa Fe lands that are encumbered by a general mineral reservation and/or the railroad reservation. Meanwhile, Santa Fe continued to transfer to third parties its interests in the general mineral reservation and/or interest, if any, in other materials, such as sand, gravel, and/or decorative rock. These third parties have begun to develop or propose development on former Santa Fe lands.

The BLM has developed this policy in response to successors to Santa Fe's mineral interests proposing or conducting mineral development on former Santa Fe lands. This policy is consistent with the Department of the Interior's position that authorization is required for all

mineral development on BLM-administered lands, and that the determination of whether operations should be authorized under 43 CFR Part 2920 or 43 CFR Part 3600 depends on ownership of the minerals or materials to be mined. See *N. Improvement Co.*, 181 IBLA 062 (2011); *Alfred Jay Schritter*, 177 IBLA 238 (2009); *Jay Schritter*, 171 IBLA 123 (2007). State law applies in determining who owns the minerals or materials in a split estate created by Santa Fe. See, e.g., *Spurlock v. Santa Fe Pacific R.R. Co.*, 694 P.2d 299 (Ariz. App. 1984). Consequently, district and field offices must work closely with the Field Solicitor's Office, through the PTS, to ascertain ownership.

**Manual/Handbook Sections Affected:** None

**Coordination:** Development of this policy was coordinated with the Intermountain Region Field Solicitor's Office and the Headquarters Solicitor's Office, Division of Mineral Resources.

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Signed:  
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